IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPEAL NO. 644 OF 1999

DATTARAM PANDURANG DODEKAR)
Bamnneda Hill, Sakarbhavan Patel
Chowk, Chakala, Vile Parle (E))
MUMBAI.) .. APPELLANT

Versus

STATE OF MAHARASHTRA .. RESPONDENTS

Mr. Milan Desai with P.N. Wagh for appellant
Mr. D. R. More, APP

CORAM:-SMT. RANJANA DESAI &
D. G. KARNIK, JJ.
DATED:- 10/3/2006

ORAL JUDGMENT: (Per D.G.Karnik, J.)

1. This appeal is filed by the appellant-accused who has been convicted for an offence of murder of Sandeep Jagdish Nagavekar (hereinafter referred to as ’Sandeep’ or "the deceased") punishable under Section 302 of the Indian Penal Code ("I.P.C." for short) by the Court of Sessions for Greater Bombay

in Sessions Case No. 410 of 1997.

2. The prosecution story in brief is as under:

. The appellant (hereinafter referred to as "the accused") and Sandeep were residing near each other and were friends. On the evening of 14th of January, 1997 the deceased requested the accused to give him chewing tobacco. The accused declined stating he did not have it. Thinking that the accused was deliberately avoiding to give tobacco the deceased gave two slaps to the accused and went away. Furiated accused went inside his house and after some time went to the house of the deceased along with a knife. As the deceased had gone away the accused threatened the mother and the wife of the deceased that he would take revenge and went away. After some time when the deceased came home he saw the accused standing in his door and abusing the deceased. The deceased went out to pacify the accused. The mother and the wife of the deceased followed him. The accused again went inside his house, brought a knife from inside and gave three blows to the deceased with the knife; one below on the right hand side of the chest, one on the right hand side of the abdomen and the third on the back

of the deceased. At that time the brother of the deceased was coming home from the hospital after seeing his new born baby. Somebody informed the brother that there was a quarrel between the deceased and the accused. The brother, therefore, went to the spot. He saw the accused with a knife in his hand and also the deceased in the injured condition. The brother of the deceased thereafter removed the deceased to the hospital. At the hospital the doctors declared that the deceased had died. From the hospital the brother of the deceased went to the police station where the First Information Report was recorded at about 21-40 hrs. Police immediately came to the spot and prepared panchnama of the spot. The police also arrested the accused by about 22-50 hrs. and the arrest panchnama was drawn. The pant worn by the accused having blood stains was also seized. On the same night, the accused expressed his desire to produce the knife used. Accordingly panchas were called at about 00.50 hrs on 15th of January 1997. The accused then led the panchas to his house and took out the knife bearing blood stains on one side of the blade from an aluminium rack.

. On these facts the accused was prosecuted and

was charged for the offence of murder punishable under Section 302 of the I.P.C.

3. It appears that the accused was financially unable to engage a counsel and, therfore, a State appointed advocate was provided to him.

4. After carefully considering the evidence adduced the Sessions Judge came to the conclusion that the accused was guilty of offence of murder of the deceased punishable under Section 302 of the I.P.C. The accused was accordingly convicted and sentenced to suffer imprisonment for life. That judgment is impugned in this appeal.

5. Prosecution examined as many as eight witnesses viz. PW 1 Ratnadeep Jagdish Nagvekar, the brother of the deceased, PW 2 Smt. Sandhya Sandeep Nagvekar, widow of the deceased, PW 3 Smt. Pramodini Jagdish Nagvekar, mother of the deceased, PW 4 Dr. Vithal Hasha Vithurkar, who conducted the postmortem, PW 5 Rajaram Jayram Kolapate, the pancha. PW 6 Purshottam Balkrishna Gamare, another pancha, PW 7 Suresh Sakharam Yeram who deposed about the earlier scuffle on account of tobacco and PW 8 Shankar Nana Jagdale, the Investigating

officer.

6. The defence of the accused before the Sessions Court was of total denial. PW 1 Ratnadeep has stated in his evidence that he was returning back at about 7-30 p.m. from the hospital after seeing his new born baby when his friend told him about scuffle between the accused and the deceased and so he rushed to the spot. He saw accused with a knife in his hand; the wife of the deceased was pulling him behind. He saw his brother falling down and becoming unconscious. Ratnadeep removed him to the hospital by a rickshaw. Ratnadeep thereafter went to the police station and lodged the complaint. The cross-examination of Ratnadeep is very scanty. Nothing was asked to him whether he had arrived at the spot before or after the incident. It was not even asked to him whether any blows were given in his presence.

7. PW 2 Smt. Sandhya Sandip Nagvekar, the widow of the deceased in her evidence has stated that there was a quarrel between the deceased and the accused earlier on account of tobacco. Thereafter accused had come to their house with a knife in his hand and stated that deceased had picked up quarrel

with him on account of tobacco and, therefore, he would not leave the deceased. The deceased was not in the house and, therefore, the accused went back. The deceased came home by about 8 p.m. At that time the accused was standing at the door of his house and abusing the deceased. The deceased went out to pacify the accused but instead the accused went inside the house and brought a knife and attacked the deceased with the knife. Near about the same time the brother of the deceased also came who removed the deceased to the hospital. Again the cross-examination of PW 2 is also scanty. No questions were put to her as to why she allowed the deceased to go to the house of the accused when the accused had come earlier to their house with a knife in his hand. It was not even suggested that she was not present and had not witnessed the incident.

8. PW 3 Smt. Pramodini Jagdish Nagvekar, the mother of the deceased has corroborated PW 2 and narrated the incident almost in the similar fashion. She added that after the accused raised the knife and started hitting the deceased, she fainted and fell down and became unconscious. The cross-examination of PW 3 is scantier still. The

only material suggestion put to her was that after she became unconscious she had not seen anything and did not know what happened thereafter. No suggestion was made to her that whether she had fallen unconscious before the accused attacked the deceased with the knife. It was, therefore, not suggested that she was not an eye witness to the stabbing.

9. PW 4 Dr. Vithal Hasha Vithurkar who conducted the postmortem proved the postmortem notes and the injuries. The postmortem notes and the substantive evidence of Dr. Vithurkar given on oath shows that the deceased received three injuries. One was a stab wound below the chest on the left side. The second was a stab wound on the abdomen of the right side and the third was a stab wound on the right side of back of the deceased. The postmortem notes show that all injuries were fresh and the cause of death was certified as Haemorrhage and shock due to multiple stab wounds on chest, abdomen and back. Nothing adverse was elicitated in the cross-examination of the doctor.

10. PW 5 Rajaram Jayram Kolapate proved the panchnamas and the discovery of the knife at the

instance of the accused. PW 6 Purshottam Balkrishna Gamare proved the spot panchnama. PW 7 Suresh Sakharam Yeram deposed that on 14th of January, 1997 at about 7 p.m. the deceased had asked the accused for a tobacco. As the accused did not give him the tobacco, he slapped him in his presence. Thereafter on account of his intervention and intervention of one Mr. Baptist, the deceased and the accused had left the place. This incident happened near the Saibaba Temple. PW 8 Shankar Nana Jagdale, Police Inspector narrated the steps of investigation. As there was no contradiction in the statement of any of the witnesses no contradiction or omission was proved through him.

11. PWs 2 and 3 are the eye witnesses. PW 2 has stated that the accused gave blows to the deceased with knife on the left side of the chest, on the right side of his chest in the front portion and also on the back side. She is a natural witness and being a wife would naturally be interested to secure conviction of the real culprit. Her testimony is not shaken a bit in the cross-examination. PW 3, the mother of the deceased is also an eye witness and she has also

deposed about the incident. The narration of the PWs 2 and 3 about the incident is consistent with each other. Even if, we assume that PW 3 became unconscious after the first blow of knife given by the accused, still she has at least witnessed the first blow and even in the cross-examination it was not suggested that she became unconscious before she could see any blow. The weapon used for the offence was discovered by the accused and the discovery is admissible under section 27 of the Evidence Act. The report of the Chemical Analyser was obtained and was not disputed by the accused. The Chemical Analyser’s report shows that the blood-stains on the shirt of the deceased as well as the pant of the accused were of "O" group. The presence of blood stains on his clothes was not explained by the accused. The case of the accused was of a total denial which is inconsistent with the presence of the blood on the pant of the accused. The bloodstains on the pant of the accused were of human blood of "O" group and the blood of the deceased was also of "O" group.

12. The learned counsel for the appellant urged that the panchnama of the deceased’s clothes and the clothe of the accused do not show that the

clothes were sealed after seizure and there is a possibility of tampering. Clothes were seized on 14th of January, 1997 and were sent to the chemical analyser on 27th of January, 1997. Thus there could be tampering during the period of 12 days. It is true that the pancha witnesses have not stated about the sealing of the clothes of the accused after the seizure. However, from the Chemical Analyser's report, we notice that the clothes when sent to the chemical analyser were sealed and the seal was in tact. There was no cross-examination of the investigating officer or the pancha on the aspect of non-mentioning of sealing of the clothes in the panchnama. There was no suggestion given to the Investigating Officer that there was tampering of the clothes In the absence of any material on record and even a suggestion about tampering in the cross-examination of any of the witnesses. We are unable to accept the argument of the learned counsel for the appellant-accused that there was a possibility of tampering of the clothes.

13. The learned counsel for the appellant accused also invited our attention to the First Information Report dated 14th of January, 1997 which consists

of two parts. First is a formal part in a proforma and the second is the statement of the brother of the deceased narrating the incident. The proforma states that the statement of Ratnadeep, PW 1 was recorded and attached to the proforma and should be regarded part of the F.I.R. Learned counsel for the appellant pointed out that at the end of the statement Ratnadeep has signed it and put the date below his signature as 15th January, 1997 He, therefore, submitted that the statement must have been recorded on 15th January, 1997 i.e. the next day and the F.I.R. and the proforma are ante dated. We notice that on the proforma the date is written as 14th of January, 1997 and the time is written as 20-40 hrs. so also at the top of the statement of Ratnadeep the date is written as 14th January, 1997. It is, therefore, possible that 15th January, 1997 has been wrongly put accidently by PW 1. In any event, we notice that there was no cross-examination of PW 1 regarding the mentioning of the date 15th January, 1997 below his statement. Similarly there was no cross-examination of the Investigating Officer or anybody else regarding the discrepancy in the date. We are, therefore, unable to accept that the F.I.R. was recorded on 15th of January, 1997 and was ante dated as 14th January,

1997.

14. We are of the view that the evidence of the eye-witnesses is cogent and reliable. The eye witnesses are natural eye-witnesses whose presence at the incident is established. They being close relatives and family members of the deceased should have no interest in shielding the real culprit and falsely implicating the accused. There is no dispute regarding the identification as the accused was known to them and was their neighbour. The F.I.R. was lodged immediately after the incident within couple of hours in which the name of the accused was disclosed. In the circumstances, we have no hesitation in coming to the conclusion that the accused has committed the crime.

15. Before we part, we must express our anguish at the manner in which the defence counsel in the trial court conducted the case. We have noted at more than one place that the cross-examination of the material witnesses was scanty. Though at the stage of appeal the learned counsel for the appellant pointed out to us the difference in the date written at the top of the F.I.R. (statement) and below the signature of PW 1. No

cross-examination was made even on this aspect. We notice that not even one contradiction or omission in the statement of any of the witnesses was brought on record. The defence counsel provided by the State either has not taken efforts to properly defend or was probably inexperienced. However, in the facts and circumstances of the case, we do not think, retrial is necessary because there is a clinching evidence about the complicity of the accused. There are eye- witnesses who are natural. The brother of the deceased might not have witnessed the accused stabbing the deceased, when he arrived at the spot but he saw the accused present there with a knife in his hand. The F.I.R. was promptly lodged and the accused was named therein. The evidence of two eye-witnesses viz. PW 2 AND PW 3 is consistent. As stated earlier the accused was neighbour and was known to them and there was no question of any mistaken identity. In the circumstances the guilt of the accused has been proved beyond reason of doubt. Therefore, despite being of the opinion that the defence counsel has not conducted the case in the manner in which it could have been conducted, we have no doubt in our mind about the guilt of the accused.

16. In the facts and circumstances of the case, we are constrained to call for a report from the Sessions Court regarding the manner in which State counsels are provided to an accused who cannot afford to engage a counsel of their own. In a given case inappropriate defence of the accused may cause injustice. We are informed at the Bar that generally counsel, who have seven or more years of practice are appointed, by the State for defending the accused who cannot engage their own counsel. In our view mere length of practice would not be enough and cannot be the sole criteria for the appointment of a State counsel for the accused. Competent lawyer must be appointed. The competency must be judged by the Sessions Judge and from his experience he may recommend the names to be included in the panel of counsel to be provided by the State for defence. Such counsel must be paid reasonable remuneration or else it would not be possible to get a reasonably competent counsel for the defence. By a separate order, we are calling the report of the Sessions Judge and would pass further directions in this matter on receipt of the report.

17. We appreciate the efforts taken by the learned

counsel for the appellant in this court, who despite his handicap of scanty cross-examination of witnesses has argued the appeal very ably and, we are satisfied that no injustice has been caused to the accused.

18. For these reasons the appeal is dismissed. Conviction and sentence of the appellant are confirmed.

(SMT. RANJANA DESAI,J.)

(D. G. KARNIK, J.)